

MAY 02 1988

U.S. Department of Labor

Employment and Training Administration
909 First Avenue
Seattle, Washington 98174

April 26, 1988

Reply to the Attention of: 10TGR-RMA-10

Excessed vs. Brock

TO: DESIGNATED EMPLOYMENT SECURITY AGENCY

Alaska	-	Joseph M. Sitton
Idaho	-	Julie M. Kilgrow
Oregon	-	W. E. Hunter
Washington	-	Isiah Turner

SUBJECT: Coverage of Forestry Workers under the
Migrant and Seasonal Agricultural Worker
Protection Act (MSPA)

We previously sent you a letter dated February 18, 1988 (copy attached) advising you of the U.S. Court of Appeals decision in which the court held that forestry workers are agricultural workers for the purposes of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and, therefore, are covered by MSPA. The court further required the Secretary of Labor to enforce MSPA "as to recruiting, soliciting, hiring, employing, furnishing or transporting any migrant or seasonal worker for all predominantly manual forestry work, including but not limited to tree planning, brush clearing, precommercial tree thinning and forest fire fighting." (Emphasis added). The injunction became effective January 7, 1988.

The injunction impacts on both the Wage and Hour Division of the Employment Standards Administration (ESA) and certain functions of the Federal-State Employment Service System. Forestry contractors engaged in the activities described above are required to register with DOL as farm labor contractors and to comply with all the provisions of MSPA. Further, State Employment Service Agencies, before referring workers to any contractor for employment, will be required to ascertain that the contractor is registered with DOL. In anticipation of new applicants, an additional supply of Farm Labor Contractor application forms were previously sent to your State Monitor Advocate under separate cover for distribution to appropriate local offices.

Effective immediately, the Wage and Hour Division must respond to and investigate all valid complaints regarding the activities of forestry contractors. State agency staff must accept, log and forward to the Wage and Hour Division all complaints received from

CC: Daley

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forestry workers as required by CFR 658.401(c). However, forestry workers are not farm workers under the employment service regulations. Complaint referrals shall be made in the same manner as complaints alleging violations of employment-related Federal laws other than employment service regulations.

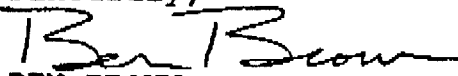
* Unless performing forestry work on a farm, forestry workers are not farm workers as defined in the ES regulations at 20 CFR 651.10. Therefore, clearance orders for forestry workers generally fall outside the scope of agricultural clearance activity in 20 CFR Part 653, Subpart F; and State ES agencies are not required to provide to forestry workers the services provided to migrant and seasonal farmworkers pursuant to 20 CFR Part 653, Subpart B.

A recent guideline (Employment Service Program Letter No. 7-88) concerning the recruitment and referral service to the U.S. Forest Service of applicants for Federal employment as temporary seasonal and summer forestry aides and technicians was also sent to your Agency under separate cover. Since the workers sought will be employed by the Federal government, and not by forestry contractors, the injunction does not affect this Forest Service project.

This decision has no effect on the H-2A program, since forestry activities other than on a farm are not "agricultural labor or services" under the Immigration and Nationality Act. Employers seeking temporary alien labor certification for activities such as tree planting, brush clearing, precommercial tree thinning, and forest fire fighting should file their applications under the H-2B regulations at 20 CFR Part 621 and under GAL No. 10-84. Employers seeking temporary alien labor certification for logging work should file applications under the H-2B regulations at 20 CFR Part 655, Subpart C. Employers seeking temporary alien labor certification for forestry activities on farms should file applications under the H-2A regulations at 20 CFR 655, Subpart B.

Questions may be directed to James Schuelke at (206) 442-4543.

Sincerely,


BEN BROWN
Regional Administrator

Attachment

cc: ESA, Wage and Hour Division